

IN THE SUPREME COURT  
APPEAL FROM THE MICHIGAN COURT OF APPEALS

---

THE PEOPLE OF THE  
STATE OF MICHIGAN,

Plaintiff-Appellant,

Supreme Court Docket No: 125441

Court of Appeals No: 252755

vs.

Lower Court No: 02-26516-FH

CHRISTOPHER CARL ROBINSON,

Defendant-Appellee.

---

**BRIEF ON APPEAL - APPELLEE**

**ORAL ARGUEMNT REQUESTED**

Robert H. German (P-45105)  
GERMAN, GERMAN & MEGLEY, P.L.C.  
Attorney for Defendant-Appellee  
120 West Savidge, P.O. Box 301  
Spring Lake, Michigan 49456  
(616) 846-5850

## **TABLE OF CONTENTS**

Index of Authorities .....	ii
Statement of Appellate Jurisdiction .....	iii
Statement of Questions Involved .....	iv
Statement of Facts .....	v
Argument I .....	1
To sustain a conviction for perjury based upon contradictory statements of the defendant, the prosecution must show which of the two statements is false and must show that statement to be false by strong corroborative evidence, not merely that the statement was contradictory. Therefore, corroboration is an element of perjury.	
Argument II .....	4
Double jeopardy prohibits a retrial of the case once a motion for directed verdict has been granted based upon the facts of the case as applied to the relevant law. Double jeopardy bars further proceedings against the appellee.	
Argument III .....	7
<u>People v. Nix</u> was correctly decided because an acquittal based upon a directed verdict at the close of the prosecution's case-in-chief, whether correct or not, is a decision based upon the facts as applied to the law. <u>People v. Nix</u> , 453 Mich. 619 (1996) was properly decided.	
Conclusion .....	8
Relief Requested .....	9

## INDEX OF AUTHORITIES

<u>Crist v. Bretz</u> , 437 US 28, 98 S Ct 2156, 57 L Ed 2d 24 (1978) . . . . .	4
<u>Fong Foo v United States</u> , 369 U.S. 141; 82 S. Ct. 671; 7 L. Ed. 2d 629 (1962) . . . . .	5
<u>Sabrina v. United States</u> 437 U.S. 54, 98 S Ct 2170, 57 L Ed2d 43 (1978) . . . . .	5
<u>Smalis v Pennsylvania</u> , 476 U.S. 140; 106 S. Ct. 1745; 90 L. Ed. 2d 116 (1986). . . . .	5
<u>United States v Ball</u> , 163 U.S. 662, 671; 16 S. Ct. 1192; 41 L. Ed. 300 (1896). . . . .	4
<u>United States v Martin Linen Co</u> , 430 U.S. 564, 571; 97 S. Ct. 1349; 51 L. Ed. 2d 642 (1977) . . . . .	4
<u>People v. Anderson</u> , 409 Mich. 474, 492; 295 N.W.2d 482 (1980). . . . .	4
<u>People v. Cash</u> , 388 Mich 153, 162; 200 NW2d 83 (1972) . . . . .	1
<u>People v Honeyman</u> , 215 Mich App 687, 691; 546 NW2d 719 (1996). . . . .	1
<u>People v. Jakiel</u> 92 Mich App 754, 285 MW2d 448 (1979) . . . . .	5
<u>People v Kennedy</u> , 221 Mich 1 (1922) . . . . .	1
<u>People v. Killingsworth</u> 80 Mich App 45, 263 NW2d 278 (1977) . . . . .	5
<u>People v Kozyra</u> , 219 Mich App 422, 428-429; 556 NW2d 512 (1996) . . . . .	1
<u>People v. Lester</u> 78 Mich App 661, 261 NW2d 33 (1977). . . . .	5
<u>People v McClintic</u> , 193 Mich 589 (1916) . . . . .	1
<u>People v. Moffit</u> , 129 Mich App 717; 342 NW2d 100 (1983) . . . . .	5
<u>People v. Nix</u> 452 Mich 619 (1996) . . . . .	7
<u>People v. Schepps</u> , 231 Mich 260, 203 NW2d 882 (1925) . . . . .	4
<u>People v. Smith</u> 89 Mich App 478, 280 NW2d 862 (1979) . . . . .	5
Black's Law Dictionary, 5 <sup>th</sup> Edition . . . . .	1

### **STATEMENT OF APPELLATE JURISDICTION**

Pursuant to MCR 7.203(E), appeals by the prosecution in a criminal case are governed by MCL 770.12. That statute provides the basis for the appeal. The Michigan Supreme Court agreed to hear the case as set forth in its June 11, 2004 Order.

## **STATEMENT OF QUESTIONS INVOLVED**

Pursuant to this Court's June 11, 2004 Order, the issues on appeal are as follows:

### **I**

To sustain a conviction for perjury based upon contradictory statements of the defendant, the prosecution must show which of the two statements is false and must show that statement to be false by strong corroborative evidence, not merely that the statement was contradictory. Is corroboration an element of perjury?

Appellant says "No"  
Appellee says "Yes"  
Trial Court says "yes"  
Court of Appeals did not answer.

### **II**

Double jeopardy prohibits a retrial of the case once a motion for directed verdict has been granted based upon the facts of the case as applied to the relevant law. Does double jeopardy bar further proceedings against the Appellee?

Appellant says "No"  
Appellee says "Yes"  
Trial Court says "yes"  
Court of Appeals answers "yes"

### **III**

People v. Nix was correctly decided because an acquittal based upon a directed verdict at the close of the prosecution's case-in-chief, whether correct or not, is a decision based upon the facts as applied to the law. Should People v. Nix, 453 Mich 619 (1996) be overruled?

Appellant says "Yes"  
Appellee says "No"  
Trial Court did not answer  
Court of Appeals did not answer.

## **STATEMENT OF FACTS**

The facts set forth by the appellant are correct and the appellee has no additional facts to bring to this Court's attention. Basically the defendant/appellee was charged with perjury after he testified in a district court drunk driving jury trial. The defendant/appellee testified that he was driving the vehicle in question, not the person (Mr. Polak) who was charged with the drunk driving offense. The arresting officer was the only prosecution witness in that drunk driving trial. The officer testified that it was not the defendant/appellee who was driving but rather the accused, Mr. Polak.

In the perjury trial before an Ottawa County Circuit Court jury, the prosecution/appellant presented the defendant/appellee's testimony by reading into the record. The prosecution/appellant also called the same arresting officer who testified in the drunk driving trial. The officer testified that the defendant/appellant was lying because he (officer) saw Mr. Polak driving. No other witnesses were presented. The defendant/appellant moved for a directed verdict which the trial court granted and dismissed the case against the defendant/appellee.

## I.

### CORROBORATION IS AN ELEMENT OF THE OFFENSE OF PERJURY.

The law is well established that to sustain a conviction against a defendant for perjury, the prosecutor must prove each of the elements of the crime beyond a reasonable doubt, including the element that the defendant made a false statement. *People v. Cash*, 388 Mich 153, 162; 200 NW2d 83 (1972); *People v Kennedy*, 221 Mich 1 (1922); *People v McClintic*, 193 Mich 589 (1916); *People v Kozyra*, 219 Mich App 422, 428-429; 556 NW2d 512 (1996); *People v Honeyman*, 215 Mich App 687, 691; 546 NW2d 719 (1996). To prove that a defendant made a false statement the prosecution must establish the truth of the contradiction. *Cash*, *supra*. The prosecution cannot satisfy its burden simply by contradicting the defendant's sworn statement. *Kozyra*, *supra* at 429. "Rather, the prosecution must present 'evidence of circumstances bringing strong corroboration of the contradiction.'" *Id.*, (quoting *Cash*, *supra*).

The appellee submits that the purpose of the corroboration requirement is to avoid perjury prosecutions based solely on a swearing contest. Cases involving testimony such as "Yes he did – No he didn't" occur on a daily basis in courthouses throughout the land. If perjury prosecutions could be had on such simple uncorroborated evidence as one witness swearing to a fact and another denying the same fact, the prisons would be filled with perjurers.

The appellant confuses the concept of the "two witness rule" with the requirement of "corroboration." Black's Law Dictionary, 5<sup>th</sup> Edition defines "Corroboration" as, to add weight or credibility to a thing by additional and confirming facts or evidence. Black's Law Dictionary, 5<sup>th</sup> Edition defines "corroborating evidence" as evidence supplementary to that already given and tending to strengthen or confirm it; additional evidence of a different character to the same point.

As indicated in the above-cited case law, corroboration is the key and necessary element to perjury. It appears that the corroboration requirement stems from the historical attempt to avoid prosecutions based upon the sole word of one person. The defendant/appellee believes that if the corroboration requirement is removed from the crime of perjury, the number of perjury prosecutions could sky rocket. Imagine the case in which a witness takes the stand and testifies contrary to a police officer's testimony. In that example, the police officer testifies that A, B and C happened while an opposing witness testifies that B, C and D happened, not A. There is no corroboration for either the police officer's or witness' testimony. The jury finds that the police officer's testimony was more credible and finds the Defendant guilty. Thereafter, the witness is prosecuted for perjury. Without the corroboration requirement, the witness could be convicted of perjury based solely on the proof of the contradictory statement.

In the case at bar, the example set forth above are essentially the facts at issue in this matter. The trial court ruled that there was no corroboration for the officer Ercole's testimony and therefore directed the verdict in favor of the defendant/appellee. If the prosecution would have produced evidence to corroborate the officer's testimony, the case would have been submitted to the jury. However, without corroboration, the case turns out to be a "his word against the other's word" leaving the trier of fact to speculate about who is telling the truth. The corroboration requirement protects the Defendant from just those types of cases and prevents the jury from taking a wild guess at who is right and who is wrong.

In this case, if the prosecution would have produced a video tape of the events, a confession from the defendant/appellee or statements from other witnesses, which would have corroborated the officer's testimony, the defendant/appellee agrees that the corroboration requirement would have been met and therefore the case would go to the jury.



The corroboration requirement should remain and be re-affirmed by this Honorable Court. The very nature of a perjury prosecution demands strong proof of contradiction since it is that contradiction that forms the basis of the charge. To hold otherwise would allow prosecutions based only upon a swearing contest.

The defendant/appellee also argues that not only does the prosecution have to provide corroboration of the falsity, but rather strong corroboration as set forth and discussed in Cash, *supra*. Indeed, if the perjury statute did not require strong corroboration, then it is possible and even likely in some jurisdictions that perjury prosecutions would be based simply on contradicting testimony. Indeed, that scenario is exactly the situation currently pending before this Court. The cases cited above use the terms “strong corroboration” rather than simply “corroboration” which suggests that there must be more than mere corroboration. The defendant/appellee believes that if the standard is weakened in any manner, prosecutions for perjury will flood the courthouses throughout Michigan.

## II.

### **DOUBLE JEOPARDY BARS FURTHER PROSECUTION OF THE APPELLEE.**

As a matter of federal constitutional law, as well as Michigan law, jeopardy attaches in a jury trial when the jury is sworn. *Crist v. Bretz*, 437 US 28, 98 S Ct 2156, 57 L Ed 2d 24 (1978); *People v. Schepps*, 231 Mich 260, 203 NW2d 882 (1925). The Double Jeopardy Clause of the Michigan Constitution prohibits retrial after a directed verdict of acquittal. *People v. Anderson*, 409 Mich. 474, 492; 295 N.W.2d 482 (1980). The application of this law to the facts of this case is straightforward. In this case, the trial court granted the Appellee's Motion for Directed Verdict based upon the lack of corroboration therefore determining that the prosecution was unable to meet its burden of proof and fulfill the elements of perjury. The trial court's decision was based upon the facts of the case as applied to the law of perjury.

The trial court's grant of Defendant's Motion for Directed Verdict bars any further proceedings relative to the charges brought against defendant/appellee as the directed verdict was based upon the trial judge's evaluation of all the evidence presented by the prosecution in its case-in-chief. The trial judge considered all the factual evidence proffered by the prosecution and concluded that that factual evidence, as a matter of law, was insufficient to permit the jury to convict defendant of the charge of perjury.

In *United States v Martin Linen Supply Co*, 430 U.S. 564, 571; 97 S. Ct. 1349; 51 L. Ed. 2d 642 (1977), the United States Supreme Court reaffirmed this principle from *Ball*<sup>1</sup> and *Fong*<sup>2</sup> *Foo*, stating: "We have emphasized that what constitutes 'an acquittal' is not to be controlled by the form of the judge's action. Rather, we must determine whether the ruling of the judge, whatever its label, actually represents a resolution, correct or not, of some or all of the factual

---

<sup>1</sup> *United States v Ball*, 163 U.S. 662, 671; 16 S. Ct. 1192; 41 L. Ed. 300 (1896)

<sup>2</sup> *Fong Foo v United States*, 369 U.S. 141; 82 S. Ct. 671; 7 L. Ed. 2d 629 (1962)

elements of the offense charged." (Citations omitted.) This principle was more recently reaffirmed in Smalis v Pennsylvania, 476 U.S. 140; 106 S. Ct. 1745; 90 L. Ed. 2d 116 (1986).

A directed verdict is a discharge by the court prior to jury verdict, whether correct or not, by a finding on one or more of the factual elements of the offense, which bars retrial as well as any prosecution appeal of the ruling. Smalis v. Pennsylvania, *supra*; Sabrina v. US 437 U.S. 54, 98 S Ct 2170, 57 L Ed2d 43 (1978); US v. Martin Linen Co. *supra*; People v. Anderson 409 Mich 474, 295 NW2d 482 (1980); People v. Moffit, 129 Mich App 717; 342 NW2d 100 (1983); People v. Jakiel 92 Mich App 754, 285 MW2d 448 (1979); People v. Smith 89 Mich App 478, 280 NW2d 862 (1979); People v. Killingsworth 80 Mich App 45, 263 NW2d 278 (1977) People v. Lester 78 Mich App 661, 261 NW2d 33 (1977).

In this case, the trial court found that the prosecution/appellant failed to present sufficient evidence on the elements of perjury. The cases cited by the defendant/appellee to the trial court clearly defined the relevant law of perjury. The trial court heard all of the prosecution's evidence and applied the relevant law to that evidence. The court directed the verdict on both legal and factual considerations and therefore retrial of the defendant/appellee is not permitted. The defendant/appellee should not be forced to endure another prosecution for the same offense for the very reasons provided for above and under the protections of the United States Constitution and the Michigan Constitution. This law is well settled, easily understood and has withstood the test of time and therefore should not be disturbed.

Certainly there are times when a defendant could be retried after a trial court dismisses a case against that defendant. However, as the above-cited case law dictates, once a jury is sworn and a decision on the evidence/merits has been made by the trial court, the defendant cannot be retried. If, on the other hand, the case is dismissed due to something other than a decision on the

merits, retrial can be had. The determination of when a defendant can be retried should not be complicated as the analysis concerns only whether the acquittal is based upon the merits of the case or some other reason. One of the more egregious violations that the government can commit against one of its citizens is to force that citizen to stand trial time and time again. For those reasons, further proceedings against the appellee is barred.

### III.

#### **PEOPLE V. NIX, 452 MICH 619 (1996) WAS PROPERLY DECIDED**

This Court properly reviewed the relevant case law from Michigan and from the United States Supreme Court in *People v. Nix* 452 Mich 619 (1996). The analysis proffered therein was consistent with the double jeopardy protections afforded defendants in our state's constitutional scheme, which is also consistent and in accord with the protections under the United States Constitution. The Appellee suggests that the factual situation in Nix is not the most easily understood set of facts ever reported; however, the legal analysis of the legal principles.

The appellant agrees that this Court in *People v. Anderson*, 409 Mich 474 (1980), correctly applied the proposition that an acquittal due to insufficient evidence of the elements of the crime is not appealable. Further, the appellant agrees that *Nix* was based upon *Anderson*. Clearly, the reasoning set forth in those two cases represent the correct state of the law in Michigan and is consistent with the protections afforded a defendant who elects to exercise his or her right to go to trial and be free from successive prosecutions. A defendant should not be required to stand trial again and again depending on whether the trial court was correct in its decision or not.

## CONCLUSION

The appellee submits that the corroboration requirement is an element of perjury and the trial court correctly directed the verdict in the appellee's favor. The trial court correctly found that the only evidence against the defendant was the police officer's testimony. That testimony only contradicted the defendant's testimony. Since the law is clear that mere contradictory statements are insufficient to sustain a conviction, the trial court correctly directed the verdict. The Court of Appeals realized that the case was properly decided and even if it was not correctly decided, any retrial would offend the Michigan Constitution and the United States Constitution and rejected the appeal. It is for those reasons that this Honorable Supreme Court should affirm the trial court's decision and the Court of Appeals' decision and dismiss the case.

The appellee also believes that the decision in People v. Nix was legally sound and in accord with the state of the law regarding double jeopardy as determined by the United States Supreme Court and from this Michigan Supreme Court.

### **RELIEF REQUESTED**

For the foregoing reasons, the appellee respectfully requests this Honorable Court to affirm the Court of Appeals' decision and the trial court's decision dismissing the charge against the appellee. The appellee requests this Honorable Court to deny the relief requested in the appellant's appeal. The case against the appellee should be dismissed and this Court's decision in People v. Nix should be reaffirmed.

Respectfully Submitted:

GERMAN, GERMAN & MEGLEY, P.L.C.

A handwritten signature in black ink, appearing to read 'R. H. German', is written over a horizontal line.

Robert H. German (P-45105)  
Attorney for Defendant/Appellee